

BEFORE THE DIVISION OF MEDICAL QUALITY

BOARD OF MEDICAL QUALITY ASSURANCE

DEPARTMENT OF CONSUMER AFFAIRS

STATE OF CALIFORNIA

In the Matter of the Accusation)	D-3568
Against:)	
)	OAH NO. L-39159
HERBERT I. JERNOW, M.D.)	
12 Greenridge Avenue)	
Whiteplains, New York 10605)	
)	
Physician's & Surgeon's)	
Certificate No. G-040767,)	
)	
Respondent.)	

ORDER CORRECTING TYPING ERROR

The cover page decision in this case dated June 30, 1987 contains an obvious typing error. The incorrect agency "Board of Registered Nursing" is hereby stricken and corrected with "Division of Medical Quality, Board of Medical Quality Assurance." This order is made nunc pro tunc to June 30, 1987.

Dated July 8, 1987

BOARD OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By *Kenneth J. Wagstaff*
KENNETH J. WAGSTAFF
Executive Director

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DECISION

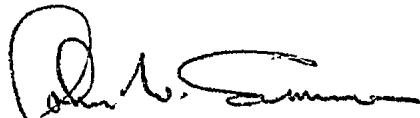
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective July 30, 1987.

IT IS SO ORDERED June 30, 1987.

BOARD OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



JOHN W. SIMMONS
Secretary-Treasurer
Division of Medical Quality

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Respondent.)	

PROPOSED DECISION

This matter came on regularly for hearing before Marguerite C. Geftakys, Administrative Law Judge of the Office of Administrative Hearings, at San Diego, California, on April 6, 1987, at 1:30 p.m.

M. Gayle Askern, Deputy Attorney General, represented the complainant.

Respondent Herbert I. Jernow, M.D., appeared in person and represented himself.

Evidence both oral and documentary having being received and the matter argued and submitted, the Administrative Law Judge now finds the following facts:

I

Complainant Kenneth J. Wagstaff is the Executive Officer of the Board of Medical Quality Assurance, State of California, and he made and filed the accusation herein in his official capacity.

II

Respondent Herbert I. Jernow, M.D., was licensed by the Board under Physician's & Surgeon's Certificate G-040767 in 1958. Said certificate is currently in full force and effect, and there is no record of disciplinary action having been taken against said certificate by the State of California.

III

A. On December 3, 1985, in a proceeding entitled, "In the Matter of the Disciplinary Proceedings Against Herbert I. Jernow," case No. 4259 before the University of the State of New York, Regents Review Committee of the Board of Regents, said Board made the following order of discipline against respondent:

"Respondent is charged with unprofessional misconduct within the meaning of New York Education Law Article 6509 and/or Article 6509-a in that he has been convicted of committing:

(i.) an act constituting a crime under New York State Law for Offering a False Instrument for Filing on or about October 20, 1978, requesting Medicaid reimbursement for medical services that respondent knew he had not rendered.

(ii.) Petit Larceny, in that on or about October 20, 1978, respondent stole funds from the State of New York and County of Westchester by knowingly accepting \$250 based on a false claim for services rendered to patients..."

B. On April 18, 1986, the Board of Regents ordered that respondent's license and registration to practice as a physician in the State of New York be suspended for one (1) year upon each specification of the charges which respondent had been found guilty, with said suspensions to be stayed at which time which respondent was placed on probation for a period of one year, upon certain terms and conditions prescribed by the Regents Review Committee.

IV

The circumstances that led to respondent's conviction involved his perpetration of Medicaid fraud in the amount of \$2,000 during a one month period of time in 1978. His Medicaid privileges as a provider were permanently revoked and he has not rendered such service to this day, although his Medicare privileges as a provider have remained in full force and effect.

V

A. Respondent has made substantial progress toward rehabilitation. He now treats many patients free of charge, including the indigent and elderly. He makes house calls daily, many of his patients being confined to the house; he treats the clergy and sisters. Respondent is most contrite and each day he recalls his conduct with deep regret.

B. He has undergone psychiatric counseling to determine why he committed the Medicaid fraud and to save his marriage which developed problems as a result of the consequences of his fraudulent acts. He suffered angina attacks and underwent cardiac surgery last year. Respondent is currently in compliance with all the terms and conditions of his probation, which is scheduled to end on May 9, 1987.

C. Respondent and his wife came from New York at considerable expense and appeared at the hearing to demonstrate his contrition and to explain that a suspension in California would result in an increase in malpractice insurance and a revocation of privileges at two hospitals in New York. Respondent is Board certified in internal medicine and neurology and would like to continue his privileges uninterrupted.

D. As a consequence of respondent's conviction, he had to expend some \$40,000 to \$50,000 in attorney's fees in New York, was compelled to build up his diminished practice again, and for a period of five years he was considered a pariah by his colleagues and was unable to obtain night-time coverage from his fellow doctors. The stress caused by the situation resulted in his cardiac problems; he is fearful of having to undergo the traumatic experience again. Respondent has made full restitution of the \$2,000 that was the subject in Medicaid fraud.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

I

It was established by clear and convincing proof to a reasonable certainty that cause for the suspension or revocation of respondent's certificate exists pursuant to the provisions of Business and Professions Code Sections 2227 and 2234 in conjunction with Sections 2305 and 2234(e) of said code in that respondent has been disciplined by another state for an act involving dishonesty as set forth in Findings III and IV, hereinabove.

II

Respondent's evidence did establish that he has made significant progress toward rehabilitation and he would not now pose a danger to the public should he be permitted to practice under a probationary certificate.

* * * * *

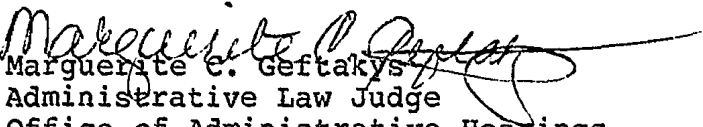
WHEREFORE, THE FOLLOWING ORDER is hereby made:

Physician's and Surgeon's Certificate No. G-040767 heretofore issued to Herbert I. Jernow, M.D., by the Board is hereby suspended for a period of one year; however, said suspension is stayed and respondent is placed on probation for a period of one year upon the following terms and conditions:

1. Respondent shall obey all Federal, State and local laws, and rules governing the practice of medicine in California.
2. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether has been compliance with all the conditions of probations.
3. Respondent shall comply with the Division's probation surveillance program.
4. Respondent shall appear in person for interviews with the Division's medical consultant upon request at various intervals and with reasonable notice.
5. No useful purpose would be served by tolling respondent's probation during his residency in New York, or any other jurisdiction outside California, taking into consideration the long passage of time since respondent's conviction and his forthcoming completion of the New York probation.
6. Upon successful completion of probation, respondent's certificate will be fully restored.
7. If respondent violates probation in any respect, the Division, after giving respondent notice and the opportunity, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

I hereby submit the foregoing which constitutes my Proposed Decision in the above-entitled matter, as a result of the hearing had before me on April 6, 1987, at San Diego, California, and recommend its by the Board of Medical Quality Assurance.

Dated: May 12, 1987


Marguerite C. Geftakys
Administrative Law Judge
Office of Administrative Hearings

MCG:hm

1 JOHN K. VAN DE KAMP, Attorney General
of the State of California
2 M. GAYLE ASKREN,
Deputy Attorney General
3 110 West A Street, Suite 700
San Diego, California 92101
4 Telephone: (619) 237-7989
5 Attorneys for Complainant
6

7 BEFORE THE
8 DIVISION OF MEDICAL QUALITY
9 BOARD OF MEDICAL QUALITY ASSURANCE
10 DEPARTMENT OF CONSUMER AFFAIRS
11 STATE OF CALIFORNIA
12

13 In the Matter of the Accusation)	No.
14 Against:)	
HERBERT I. JERNOW, M.D.)	ACCUSATION
12 Greenridge Avenue)	
Whiteplains, New York 10605)	
Physician's & Surgeon's)	
Certificate No. G-040767)	
Respondent.)	

19
20 COMES NOW Complainant Kenneth J. Wagstaff, who
21 alleges as follows:

22 1. He is the Executive Officer of the Board of
23 Medical Quality Assurance, State of California, and makes and
24 files the within accusation in his official capacity.

25 2. Respondent Herbert I. Jernow, M.D., was licensed
26 by the Board under Physician's and Surgeon's Certificate
27 No. G-040767 in 1958. Said certificate is currently in full

1 force and effect, and there is no Board record of disciplinary
2 action having been taken against the above-named certificate by
3 the State of California.

4 3. Sections 2227 and 2234 of the Business and
5 Professions Code ("Code") provide, in part, that the Board shall
6 take disciplinary action against any licensee who has been
7 charged with, and found guilty of, unprofessional conduct.

8 4. Code section 2234(e) provides that the commission
9 of any act involving dishonesty or corruption which is
10 substantially related to the qualifications, functions, or
11 duties of a physician constitutes unprofessional conduct.

12 5. Code section 2305 provides that the revocation,
13 supervision, or other discipline by another state of a license
14 or certificate to practice medicine issued by the state to a
15 licensee under the California Medical Practice Act (Chap. 5,
16 Div. 2, of the Code, §§ 2000 et seq.) shall constitute grounds
17 for disciplinary action for unprofessional conduct against such
18 licensee in this state.

19 6. Respondent is subject to disciplinary action
20 pursuant to Code sections 2305 and 2234(e) in that he has been
21 disciplined by another state for an act involving dishonesty or
22 corruption, as follows:

23 A. On or about December 3, 1985, in a proceeding
24 entitled "In the Matter of the Disciplinary Proceeding Against
25 Herbert I. Jernow" before the University of the State of
26 New York, Regents Review Committee of the Board of Regents, said
27 Board made the following order of discipline against respondent:

Respondent is charged with unprofessional misconduct within the meaning of New York Education Law § 6509 and/or § 6509-a in that he has been convicted of committing:

(i.) an act constituting a crime under New York State Law for Offering a False Instrument for Filing on or about October 20, 1978, requesting Medicaid reimbursement for medical services that respondent knew he had not rendered.

(ii.) Petit Larceny, in that on or about October 20, 1978, respondent stole funds from the State of New York and County of Westchester by knowingly accepting \$250 based on a false claim for services rendered to patients:

B. As a result of the acts described above, it was ordered by the Board of Regents on April 18, 1986, that respondent's license and registration to practice as a physician in the State of New York be suspended for one year upon each specification of the charges of which respondent has been found guilty, said suspensions to be stayed at which time respondent then be placed on probation for a period of one year under the terms of probation prescribed by the Regents Review Committee.


WHEREFORE, it is prayed that the Division of Medical Quality of the Board of Medical Quality Assurance hold a hearing on the allegations contained herein and that following such hearing the Division:

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1. Issue its Order of Discipline against respondent
Herbert I. Jernow, M.D.; or

2. Take such other or further action as is deemed
proper.

DATED: October 24, 1986.


KENNETH J. WAGSTAFF
Executive Officer
Board of Medical Quality Assurance
Department of Consumer Affairs
State of California